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IN THE

Supreme Court of the United States

October Term, 1965

No. 1154

DIANA KEARNY POWELL,

Petitioner,

v.

NATIONAL SAVINGS AND TRUST COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered March 11, 1966, in Appeal No. 19,782, *Powell v. National Savings and Trust Company, et al.*

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia rendered September 24, 1965 in *Lucy Powell (deceased) v. Diana Kearny Powell et al.*,

Civil Action 4051-55, (R 19) and the judgment entered thereon September 29, 1965 (R 20), are not reported.

The judgment without opinion of the United States Court of Appeals for the District of Columbia Circuit, *Powell v. National Savings and Trust Company, et al.*, No. 19,782, entered March 11, 1966 (A 1) has not yet been officially reported.

Related judgments in *Lucy Powell (deceased) v. Diana Kearny Powell et al., and appeals therefrom (Powell v. National Savings and Trust Company, et al.)*, are reported at 111 U.S. App. D.C. 290, 296 F. 2d 412, *cert. denied*, 368 U. S. 946 (1961), *rehearing denied*, 368 U. S. 1005 (1962); 114 U. S. App. D. C. 269, 314 F. 2d 274 (1963); No. 17,658, November 19, 1963, January 15, 1964; No. 18,292, May 19, 1964, *cert. denied* 379 U. S. 920 (1964), *rehearing denied* 379 U. S. 984 (1965).

Related cases of *Powell v. Katzenbach* (Appeal No. 19,285) and *Powell v. Paige et al.* (Appeal No. 19547), have not yet been reported in the court below. They are now before this Court in No. 1063 on Petition for Writ of Certiorari.[1]

JURISDICTION

This Court has jurisdiction under 28 U.S.C. 1254(1), and under the Constitution of the United States, Article III, Sec. 2, providing for appellate jurisdiction in cases arising under the Constitution and laws of the United States.

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[1] The decision here sought to be reviewed was not joined because rendered after expiration of time for docketing related cases.

Review is sought of a judgment of the United States Court of Appeals for the District of Columbia Circuit affirming a judgment of the court below denying a petition for Writ of Quo Warranto to test the authority of a trustee reclaiming vested property after final distribution by fraud and misrepresentations to the Court of its own status and the status of the parties, in violation of petitioner's right to due process of law under the Constitution of the United States.

QUESTION PRESENTED

Is a decision of the United States Court of Appeals for the District of Columbia Circuit predicated upon misrepresentations of a trustee and which reverses the law of vested property stated by this Court in *Dartmouth College v. Woodward* and other decisions, reviewable by this Court?

CONSTITUTION, STATUTES

Constitution of the United States, Amendment 5:

No person shall. . . be deprived of life, liberty, or property, without due process of law; . . .

STATEMENT OF THE CASE

Respondent National Savings and Trust Company was appointed successor trustee on death of the testamentary trustee, of the trust estate of Diana Kearny Powell, deceased (grandmother of petitioner of the same name), set up in her will (R5) (Administration

12,657) in a separate action brought for that purpose Civil Action 4051-55, *Lucy Powell (now deceased) v. Diana Kearny Powell, et al.* (R 1), Lucy Powell being the trust beneficiary and the defendants the remaindermen (R 1). The trust terminated September 1, 1958, with the death of Lucy Powell, leaving petitioner the only remainderman *in esse* (R 15). Thereafter the trustee of the now terminated trust, by sophistic reasoning and a series of subtle misrepresentations, on the theory that the remaindermen named in the will, all now deceased, had taken an immediate outright title to the remainder estate, claimed it for their own agents as personal representatives of deceased remaindermen. This interpretation of a will which needed no interpretation, was sustained by the Court, although patently in conflict both with the case law and with the title vested in the trustee and the rights of the trust beneficiary, and subsequently claimed in successive appeals to be *res judicata*. On petition for Writ of Quo Warranto to test the authority of the National Savings and Trust Company to reclaim already distributed remainder and to withhold distributable remainder from petitioner on a patently fraudulent claim, the petition was denied as *res judicata* (A 1).

ARGUMENT

Petitioner submits that this Court should review this case which makes a mockery of the obligation of trusts, the processes of justice, and the ruling of the Court. Petitioner prays that this case be considered in connection with *Powell v. Katzenbach et al.*, No. 1063, now pending on Petition for Writ of Certiorari, which

seeks criminal action and civil recovery for the frauds committed in the case at bar.

Failure to reverse this case would leave in shambles the law of wills as interpreted in *Pyne v. Pyne*, 81 U.S. App. D.C. 11, 154 F.2d 297; *Caine v. Payne*, 86 U.S. App. D.C. 404, 182 F.2d 246; and *Jewell v. Graham*, 97 App. D.C. 391, 24 F.2d 257; *cert. den.* 48 S.Ct. 559, 277 U.S. 596, 72 L.Ed. 1006.

The case completely reverses the ruling of this Court in regard to trusts and vested property as stated in *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518, 4 L.Ed. 629; *Ochoa v. Hernandez*, 230 U.S. 139, 57 L.Ed. 1427, 33 S.Ct. 1033.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that her Petition for Writ of Certiorari be granted.

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APPENDIX
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APPENDIX A

[Filed March 11, 1966]

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit
September Term 1965

No. 19782

C.A. No. 4051-55

DIANA KEARNY POWELL,

Appellant,

v.

NATIONAL SAVINGS AND TRUST COMPANY, ET AL.,

Appellees.

Appeal from the United States District Court for the District of Columbia.

Before: Danaher, McGowan and Leventhal, Circuit Judges

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

The District Court having previously construed a trust instrument contrary to appellant's claims, this court having thereafter affirmed, *Powell v. National Savings and Trust Company*, 111 U.S. App. D. C. 290,

296 F.2d 412, *cert. denied,* 368 U. S. 946 (1961), *rehearing denied,* 368 U.S. 1005 (1962); appellant thereafter having brought various contentions to this court in *Powell v. National Savings & Trust Co.,* 114 U.S. App. D.C. 269, 314 F. 2d 274 (1963); *Powell v. National Savings and Trust Co.,* No. 17,658, judgment entered November 19, 1963, rehearing *en banc* denied January 15, 1964; *Powell v. National Savings and Trust Co.,* No. 18,292, order entered May 19, 1964, *cert. denied,* 379 U. S. 920 (1964), *rehearing denied,* 379 U. S. 984 (1965); *Powell v. Paige, et al.,* ____U.S. App. D.C. ____, ____F. 2d ____ (No. 19547, Dec. 9, 1965), and appellant thereafter having brought this appeal from an order of the District Court denying appellant's motion to set aside the report of the auditor and for leave to file a third party complaint in the nature of *quo warranto,* and the case having come before this court and having been fully argued; now upon consideration of the foregoing and the files and the records in the respective causes, and the briefs of respective counsel, and it appearing that the appellant has failed to sustain her burden of demonstrating error,

It is ORDERED by the court that the judgment of the District Court appealed from herein is affirmed.

Per Curiam.

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PETITION FOR REHEARING

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PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays for rehearing on intervening circumstances and grounds not previously presented under Rule 58(2) of this Court of the Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit denied by this Court on May 16, 1966.

NEW QUESTION PRESENTED

Is federal deposit insurance applicable to trust property declared by a United States Court to have vested finally and in fee in remaindermen who had already died prior to appointment of the trustee bank, and therefore was declared legally vested in the estates of the deceased remaindermen instead of in the trustee?

STATUTE INVOLVED

U.S.C.A. Title 12, sec. 1817(i) *Insurance of Trust Funds.*

> Trust funds held by an insured bank in a fiduciary capacity whether held in its trust department or held or deposited in any other department of the fiduciary bank shall be insured in an amount not to exceed $10,000 for each trust estate, . . . As amended July 14, 1960, Pub. L. 86-671, sec. 2, 3, 74 Stat. 547, Sept. 12, 1964, Pub. L. 88-593, 78 Stat. 940.

RESTATEMENT OF FACTS

Respondent has obtained by misrepresentation of material facts trust property, the *present* legal as well as equitable title to which has been declared by a United States Court to have vested finally, irrevocably, and in fee in remaindermen who had already died prior to its appointment, the Court declaring and affirming on appeal that (in consequence of the irrevocability of the earlier vesting) the *present* legal as well as equitable title to the corpus had finally vested in the estates of the remaindermen prior to appointment of respondent-trustee, and therefore was in conflict with claims of petitioner limited to take effect upon termination of the trust.

NEW GROUNDS FOR PETITION

Petitioner presents for reconsideration the question not previously decided by this Court whether a federally insured bank, by deliberate and known fraud, that is, misrepresentations presenting claims in direct conflict with its own title as trustee, and not raised until after the trust is terminated, disqualifies itself from federal deposit insurance, or, in the alternative, is federal deposit insurance applicable to property fraudulently held by an insured bank as trustee.

Petitioner represents that the question of whether federal deposit insurance covers a bank engaged in fraud is a question of far-reaching import not previously decided by this Court and which should be decided by this Court, since it involves (1) the use of public funds to protect violation of law; and/or (2) inducement to condone fraud, corruption, and violation of law by a federally insured bank to avoid federal insurance liability if the fraud is exposed.

This question affects every federally insured bank and federally insured deposit, and may qualify the petition as grounds for appeal by raising the implied question whether the Federal Deposit Insurance Act violates the guarantee of due process under the Constitution of the United States.

CONCLUSION

WHEREFORE, Petitioner respectfully prays for reconsideration, and that the petition for Writ of Certiorari be granted.

DIANA KEARNY POWELL

1500 Massachusetts Ave., N.W.
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Petitioner pro se

CERTIFICATE OF GOOD FAITH

I, Diana Kearny Powell, the Petitioner herein and a member of the Bar of the Supreme Court of the United States, hereby certify that the foregoing Petition for Rehearing of Petition for Writ of Certiorari is presented in good faith and not for delay, and that it is restricted to intervening circumstances of substantial effect, or which to the extent that they were available to petitioner, were not previously presented.

DIANA KEARNY POWELL

1500 Massachusetts Ave., N.W.
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Petitioner pro se

CERTIFICATE OF SERVICE

I, Diana Kearny Powell, a member of the Bar of the Supreme Court of the United States, hereby certify that service of the foregoing Petition for Rehearing was made upon respondents by delivery of five copies thereof on the 9th day of June, 1966, at the office of the attorneys of record as follows:

Thurgood Marshall, Solicitor General
Department of Justice
Washington, D. C. 20530
For the Hon. Nicholas Katzenbach,
Attorney General

Henry M. Paige
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Washington, D. C. 20006

DIANA KEARNY POWELL